

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-  
2 3712, 10.1-104.7, 23.1-1303, and 54.1-2400.2 of the Code of Virginia, relating to the Virginia  
3 Freedom of Information Act; public access to meetings of public bodies.

4 **Annotated--This proposed draft is the consolidation of the FOIA Council Meetings**  
5 **Subcommittee's legislative recommendations made during the course of the HJR 96 Study**  
6 **(2014--2016). Each recommendation of the Meetings Subcommittee incorporated in this**  
7 **omnibus draft has been approved by the FOIA Council.**

8 **How to use this document: Each recommended change in this document is annotated to provide**  
9 **the following information: the legislative draft (LD) identification number of the**  
10 **recommended change before incorporation into this omnibus draft, the date when**  
11 **recommendation was adopted by the Meetings Subcommittee, and the date the**  
12 **recommendation was approved by the FOIA Council.**

13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7, 23.1-**  
15 **1303, and 54.1-2400.2 of the Code of Virginia are amended and reenacted as follows:**

16 **§ 2.2-3701. Definitions.**

17 As used in this chapter, unless the context requires a different meaning:

18 "Closed meeting" means a meeting from which the public is excluded.

19 "Electronic communication" means any audio or combined audio and visual communication  
20 method.

21 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter  
22 impossible or impracticable and which circumstance requires immediate action.

23 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means  
24 the content within a public record that references a specifically identified subject matter, and shall not be  
25 interpreted to require the production of information that is not embodied in a public record.

26 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,  
27 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as  
28 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the  
29 constituent membership, wherever held, with or without minutes being taken, whether or not votes are  
30 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or  
31 attendance of two or more members of a public body (i) at any place or function where no part of the  
32 purpose of such gathering or attendance is the discussion or transaction of any public business, and such  
33 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any  
34 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of  
35 which is to inform the electorate and not to transact public business or to hold discussions relating to the  
36 transaction of public business, even though the performance of the members individually or collectively  
37 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be  
38 deemed a "meeting" subject to the provisions of this chapter.

39 "Open meeting" or "public meeting" means a meeting at which the public may be present.

40 "Public body" means any legislative body, authority, board, bureau, commission, district or  
41 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,  
42 towns and counties, municipal councils, governing bodies of counties, school boards and planning  
43 commissions; boards of visitors of public institutions of higher education; and other organizations,  
44 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall  
45 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of  
46 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,  
47 subcommittee, or other entity however designated, of the public body created to perform delegated  
48 functions of the public body or to advise the public body. It shall not exclude any such committee,

49 subcommittee or entity because it has private sector or citizen members. Corporations organized by the  
50 Virginia Retirement System are "public bodies" for purposes of this chapter.

51 For the purposes of the provisions of this chapter applicable to access to public records,  
52 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public  
53 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose  
54 public records as other custodians of public records.

55 "Public records" means all writings and recordings that consist of letters, words or numbers, or  
56 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic  
57 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data  
58 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,  
59 or in the possession of a public body or its officers, employees or agents in the transaction of public  
60 business. Records that are not prepared for or used in the transaction of public business are not public  
61 records.

62 "Regional public body" means a unit of government organized as provided by law within defined  
63 boundaries, as determined by the General Assembly, ~~whose members are appointed by the participating~~  
64 ~~local governing bodies, and such which~~ unit includes two or more ~~counties or cities~~ localities. [LD  
65 17100176; recommended by Meetings Subcommittee on 9/19/16; Approved by FOIA Council  
66 9/19/16.]

67 "Scholastic records" means those records containing information directly related to a student or  
68 an applicant for admission and maintained by a public body that is an educational agency or institution  
69 or by a person acting for such agency or institution.

70 § 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes. [LD 17100047;  
71 recommended by Meetings Subcommittee on 6/6/16; Approved by FOIA Council 10/17/16.]

72 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-  
73 3711.

74 B. No meeting shall be conducted through telephonic, video, electronic or other communication  
75 means where the members are not physically assembled to discuss or transact public business, except as

76 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary  
77 suspension of professional licenses.

78 C. Every public body shall give notice of the date, time, and location of its meetings by ~~placing~~  
79 ~~the notice in a prominent public location at which notices are regularly posted and in the office of the~~  
80 ~~clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief~~  
81 ~~administrator;~~

82 1. Posting such notice on its publicly available website, if any;

83 2. Placing such notice in a prominent public location at which notices are regularly posted; and

84 3. Placing such notice at the office of the clerk of the public body or, in the case of a public body  
85 that has no clerk, in the office of the chief administrator.

86 All state public bodies subject to the provisions of this chapter shall also post notice of their  
87 meetings ~~on their websites and on the electronic calendar maintained by the Virginia Information~~  
88 ~~Technologies Agency commonly known as the Commonwealth Calendar~~ on a central, publicly available  
89 electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic  
90 means by other state public bodies shall be encouraged.

91 The notice shall be posted at least three working days prior to the meeting. ~~Notices for meetings~~  
92 ~~of state public bodies on which there is at least one member appointed by the Governor shall state~~  
93 ~~whether or not public comment will be received at the meeting and, if so, the approximate point during~~  
94 ~~the meeting when public comment will be received.~~

95 D. Notice, reasonable under the circumstance, of special ~~or~~, emergency, or continued meetings  
96 shall be given contemporaneously with the notice provided to the members of the public body  
97 conducting the meeting.

98 E. Any person may annually file a written request for notification with a public body. The  
99 request shall include the requester's name, address, zip code, daytime telephone number, electronic mail  
100 address, if available, and organization, if any. The public body receiving such request shall provide  
101 notice of all meetings directly to each such person. Without objection by the person, the public body  
102 may provide electronic notice of all meetings in response to such requests.

103 F. At least one copy of [the proposed agenda and](#) all agenda packets and, unless exempt, all  
104 materials furnished to members of a public body for a meeting shall be made available for public  
105 inspection at the same time such documents are furnished to the members of the public body. [The](#)  
106 [proposed agendas for meetings of state public bodies where at least one member has been appointed by](#)  
107 [the Governor shall state whether or not public comment will be received at the meeting and, if so, the](#)  
108 [approximate point during the meeting when public comment will be received.](#)

109 G. ~~The notice provisions of this chapter shall not apply to informal meetings or gatherings of the~~  
110 ~~members of the General Assembly.~~

111 ~~H.~~ Any person may photograph, film, record or otherwise reproduce any portion of a meeting  
112 required to be open. The public body conducting the meeting may adopt rules governing the placement  
113 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to  
114 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from  
115 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be  
116 open. No public body shall conduct a meeting required to be open in any building or facility where such  
117 recording devices are prohibited.

118 ~~I-H.~~ Minutes shall be recorded at all open meetings. However, minutes shall not be required to  
119 be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative  
120 interim study commissions and committees, including the Virginia Code Commission; (iii) study  
121 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,  
122 or any other committees or subcommittees appointed by the governing bodies or school boards of  
123 counties, cities and towns, except where the membership of any such commission, committee or  
124 subcommittee includes a majority of the governing body of the county, city or town or school board.

125 Minutes, including draft minutes, and all other records of open meetings, including audio or  
126 audio/visual records shall be deemed public records and subject to the provisions of this chapter.

127 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii)  
128 the members of the public body recorded as present and absent; and (iii) a summary of the discussion on  
129 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic

130 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall  
131 include (a) the identity of the members of the public body at each remote location identified in the notice  
132 who participated in the meeting through electronic communications means, (b) the identity of the  
133 members of the public body who were physically assembled at the primary or central meeting location,  
134 and (c) the identity of the members of the public body who were not present at the locations identified in  
135 clauses (a) and (b), but who monitored such meeting through electronic communications means.

136 § 2.2-3707.1. Posting of minutes for state boards and commissions. [LD 17100786;](#)  
137 [recommended by Meetings Subcommittee on 9/19/16; Approved by FOIA Council 10/17/16.](#)

138 All boards, commissions, councils, and other public bodies created in the executive branch of  
139 state government and subject to the provisions of this chapter shall post minutes of their meetings on  
140 such body's [official public government](#) website, ~~if any,~~ and on ~~the~~ [a central](#) electronic calendar  
141 maintained by the ~~Virginia Information Technologies Agency commonly known as the Commonwealth~~  
142 [Calendar Commonwealth](#). Draft minutes of meetings shall be posted as soon as possible but no later  
143 than ~~ten~~ [10](#) working days after the conclusion of the meeting. Final approved meeting minutes shall be  
144 posted within three working days of final approval of the minutes.

145 § 2.2-3708. Electronic communication meetings; applicability; physical quorum required;  
146 exceptions; notice; report. [LD 17100176; recommended by Meetings Subcommittee on 9/19/16;](#)  
147 [Approved by FOIA Council 9/19/16.](#)

148 A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local  
149 governing body, school board, or any authority, board, bureau, commission, district or agency of local  
150 government, any committee thereof, or any entity created by a local governing body, school board, or  
151 any local authority, board, or commission shall conduct a meeting wherein the public business is  
152 discussed or transacted through telephonic, video, electronic or other communication means where the  
153 members are not physically assembled. Nothing in this section shall be construed to prohibit the use of  
154 interactive audio or video means to expand public participation.

155 B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state  
156 public bodies may conduct any meeting wherein the public business is discussed or transacted through

157 electronic communication means, provided (i) a quorum of the public body is physically assembled at  
158 one primary or central meeting location, (ii) notice of the meeting has been given in accordance with  
159 subsection C, and (iii) the remote locations, from which additional members of the public body  
160 participate through electronic communication means, are open to the public. All persons attending the  
161 meeting at any of the meeting locations shall be afforded the same opportunity to address the public  
162 body as persons attending the primary or central location.

163 If an authorized public body holds an electronic meeting pursuant to this section, it shall also  
164 hold at least one meeting annually where members in attendance at the meeting are physically  
165 assembled at one location and where no members participate by electronic communication means.

166 C. Notice of any ~~meetings~~ regular meeting held pursuant to this section shall be provided at least  
167 three working days in advance of the date scheduled for the meeting. Notice, reasonable under the  
168 circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given  
169 contemporaneously with the notice provided to members of the public body conducting the meeting. For  
170 the purposes of this subsection, "continued meeting" means a meeting that is continued to address an  
171 emergency or to conclude the agenda of a meeting for which proper notice was given.

172 The notice shall include the date, time, place, and purpose for the meeting; shall identify the  
173 locations for the meeting; and shall include a telephone number that may be used at remote locations to  
174 notify the primary or central meeting location of any interruption in the telephonic or video broadcast of  
175 the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting  
176 shall result in the suspension of action at the meeting until repairs are made and public access restored.

177 D. ~~Agenda~~ A copy of the proposed agenda and agenda packets and, unless exempt, all materials  
178 that will be distributed to members of the public body and that have been made available to the staff of  
179 the public body in sufficient time for duplication and forwarding to all locations where public access  
180 will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings  
181 held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken  
182 during any meeting conducted through electronic communication means shall be recorded by name in  
183 roll-call fashion and included in the minutes.

184 E. Three working days' notice shall not be required for meetings authorized under this section  
185 held in accordance with subsection G ~~or that are continued to address an emergency or to conclude the~~  
186 ~~agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose~~  
187 ~~of the continued meeting are set during the meeting prior to adjournment.~~ Public bodies conducting  
188 emergency meetings through electronic communication means shall comply with the provisions of  
189 subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the  
190 minutes.

191 F. Any authorized public body that meets by electronic communication means shall make a  
192 written report of the following to the Virginia Freedom of Information Advisory Council ~~and the Joint~~  
193 ~~Commission on Technology and Science~~ by December 15 of each year:

- 194 1. The total number of electronic communication meetings held that year;
- 195 2. The dates and purposes of the meetings;
- 196 3. A copy of the agenda for the meeting;
- 197 4. The number of sites for each meeting;
- 198 5. The types of electronic communication means by which the meetings were held;
- 199 6. The number of participants, including members of the public, at each meeting location;
- 200 7. The identity of the members of the public body recorded as absent and those recorded as  
201 present at each meeting location;
- 202 8. A summary of any public comment received about the electronic communication meetings;
- 203 and
- 204 9. A written summary of the public body's experience using electronic communication meetings,  
205 including its logistical and technical experience.

206 In addition, any authorized public body shall make available to the public at any meeting  
207 conducted in accordance with this section a public comment form prepared by the Virginia Freedom of  
208 Information Advisory Council in accordance with § 30-179.

209 G. Any public body may meet by electronic communication means without a quorum of the  
210 public body physically assembled at one location when the Governor has declared a state of emergency

211 | in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency  
212 | makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the  
213 | meeting is to address the emergency. The public body convening a meeting in accordance with this  
214 | subsection shall (a) give public notice using the best available method given the nature of the  
215 | emergency, which notice shall be given contemporaneously with the notice provided members of the  
216 | public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c)  
217 | otherwise comply with the provisions of this section. The nature of the emergency, the fact that the  
218 | meeting was held by electronic communication means, and the type of electronic communication means  
219 | by which the meeting was held shall be stated in the minutes.

220 | ~~H. [Expired].~~

221 | **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance**  
222 | **from meeting location for certain public bodies. [LD 17100176; recommended by Meetings**  
223 | **Subcommittee on 9/19/16; Approved by FOIA Council 9/19/16.]**

224 | A. A member of a public body may participate in a meeting governed by this chapter through  
225 | electronic communication means from a remote location that is not open to the public only as follows  
226 | and subject to the requirements of subsection B:

227 | 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies  
228 | the chair of the public body that such member is unable to attend the meeting due to ~~an emergency or a~~  
229 | personal matter and identifies with specificity the nature of the ~~emergency or~~ personal matter, and the  
230 | public body holding the meeting records in its minutes the specific nature of the ~~emergency or~~ personal  
231 | matter and the remote location from which the member participated. If a member's participation from a  
232 | remote location is disapproved because such participation would violate the policy adopted pursuant to  
233 | subsection B, such disapproval shall be recorded in the minutes with specificity.

234 | Such participation by the member shall be limited each calendar year to two meetings ~~or 25~~  
235 | ~~percent of the meetings of the public body, whichever is fewer;~~

236 | 2. If a member of a public body notifies the chair of the public body that such member is unable  
237 | to attend a meeting due to a temporary or permanent disability or other medical condition that prevents

238 the member's physical attendance and the public body records this fact and the remote location from  
239 which the member participated in its minutes; or

240 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public  
241 body that such member's principal residence is more than 60 miles from the meeting location identified  
242 in the required notice for such meeting and the public body holding the meeting records in its minutes  
243 the remote location from which the member participated. If a member's participation from a remote  
244 location is disapproved because such participation would violate the policy adopted pursuant to  
245 subsection B, such disapproval shall be recorded in the minutes with specificity.

246 B. Participation by a member of a public body as authorized under subsection A shall be only  
247 under the following conditions:

248 1. The public body has adopted a written policy allowing for and governing participation of its  
249 members by electronic communication means, including an approval process for such participation,  
250 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied  
251 strictly and uniformly, without exception, to the entire membership and without regard to the identity of  
252 the member requesting remote participation or the matters that will be considered or voted on at the  
253 meeting;

254 2. A quorum of the public body is physically assembled at the primary or central meeting  
255 location; and

256 3. The public body makes arrangements for the voice of the remote participant to be heard by all  
257 persons at the primary or central meeting location.

258 § 2.2-3711. Closed meetings authorized for certain limited purposes. [\[\(i\) LD 15100276;](#)  
259 [recommended by Meetings Subcommittee on 8/19/14; Approved by FOIA Council 11/21/16; \(ii\)](#)  
260 [LD 1610002; recommended by Meetings Subcommittee on May 12, 2015; Approved by FOIA](#)  
261 [Council 6/23/16; \(iii\) 16100201, recommended by Meetings Subcommittee on 7/21/15; Approved](#)  
262 [by FOIA Council 6/23/16; and \(iv\) LD 17100049; recommended by Meetings Subcommittee](#)  
263 [9/19/16; Approved by Council 9/19/16.\]](#)

264 A. Public bodies may hold closed meetings only for the following purposes:

265 1. Discussion, consideration, or interviews of prospective candidates for employment;  
266 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of  
267 specific public officers, appointees, or employees of any public body; and evaluation of performance of  
268 departments or schools of public institutions of higher education where such evaluation will necessarily  
269 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be  
270 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter  
271 that involves the teacher and some student and the student involved in the matter is present, provided the  
272 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing  
273 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body  
274 or an elected school board to discuss compensation matters that affect the membership of such body or  
275 board collectively.

276 2. Discussion or consideration of admission or disciplinary matters or any other matters that  
277 would involve the disclosure of information contained in a scholastic record concerning any student of  
278 any Virginia public institution of higher education or any state school system. However, any such  
279 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be  
280 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if  
281 such student, parents, or guardians so request in writing and such request is submitted to the presiding  
282 officer of the appropriate board.

283 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the  
284 disposition of publicly held real property, where discussion in an open meeting would adversely affect  
285 the bargaining position or negotiating strategy of the public body.

286 4. The protection of the privacy of individuals in personal matters not related to public business.

287 5. Discussion concerning a prospective business or industry or the expansion of an existing  
288 business or industry where no previous announcement has been made of the business' or industry's  
289 interest in locating or expanding its facilities in the community.

290 6. Discussion or consideration of the investment of public funds where competition or bargaining  
291 is involved, where, if made public initially, the financial interest of the governmental unit would be  
292 adversely affected.

293 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to  
294 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect  
295 the negotiating or litigating posture of the public body; ~~and consultation with legal counsel employed or~~  
296 ~~retained by a public body regarding specific legal matters requiring the provision of legal advice by such~~  
297 ~~counsel~~. For the purposes of this subdivision, "probable litigation" means litigation that has been  
298 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
299 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit  
300 the closure of a meeting merely because an attorney representing the public body is in attendance or is  
301 consulted on a matter.

302 8. ~~In the case of boards of visitors of public institutions of higher education, discussion~~  
303 ~~Consultation with legal counsel employed or retained by a public body regarding specific legal matters~~  
304 ~~requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to~~  
305 ~~permit the closure of a meeting merely because an attorney representing the public body is in attendance~~  
306 ~~or is consulted on a matter.~~

307 9. Discussion or consideration by boards of visitors of public institutions of higher education of  
308 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or  
309 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,  
310 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and  
311 accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon  
312 written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign  
313 government" means any government other than the United States government or the government of a  
314 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity (a) created under  
315 the laws of the United States or of any state thereof if a majority of the ownership of the stock of such  
316 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of

317 any such entity is composed of foreign persons or foreign legal entities; or ~~any legal entity (b)~~ created  
318 under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a  
319 citizen or national of the United States or a trust territory or protectorate thereof.

320 ~~9. In the case of~~ 10. Discussion or consideration by the boards of trustees of the Virginia  
321 Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation,  
322 and The Science Museum of Virginia, ~~discussion or consideration~~ of matters relating to specific gifts,  
323 bequests, and grants from private sources.

324 ~~10-11.~~ Discussion or consideration of honorary degrees or special awards.

325 ~~11-12.~~ Discussion or consideration of tests, examinations, or other information used,  
326 administered, or prepared by a public body and excluded from this chapter pursuant to subdivision 4 of §  
327 2.2-3705.1.

328 ~~12-13.~~ Discussion, consideration, or review by the appropriate House or Senate committees of  
329 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure  
330 statement filed by the member, provided the member may request in writing that the committee meeting  
331 not be conducted in a closed meeting.

332 ~~13-14.~~ Discussion of strategy with respect to the negotiation of a hazardous waste siting  
333 agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if  
334 the governing body in open meeting finds that an open meeting will have an adverse effect upon the  
335 negotiating position of the governing body or the establishment of the terms, conditions and provisions  
336 of the siting agreement, or both. All discussions with the applicant or its representatives may be  
337 conducted in a closed meeting.

338 ~~14-15.~~ Discussion by the Governor and any economic advisory board reviewing forecasts of  
339 economic activity and estimating general and nongeneral fund revenues.

340 ~~15-16.~~ Discussion or consideration of medical and mental health records excluded from this  
341 chapter pursuant to subdivision 1 of § 2.2-3705.5.

342 ~~16-17.~~ Deliberations of the Virginia Lottery Board in a licensing appeal action conducted  
343 pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales

344 agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery  
345 game information and studies or investigations ~~exempted~~ excluded from ~~disclosure under this chapter~~  
346 pursuant to subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

347 ~~17. Those portions of meetings by local government crime commissions where the identity of, or~~  
348 ~~information tending to identify, individuals providing information about crimes or criminal activities~~  
349 ~~under a promise of anonymity is discussed or disclosed.~~

350 18. Those portions of meetings in which the Board of Corrections discusses or discloses the  
351 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or  
352 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
353 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
354 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

355 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
356 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-  
357 enforcement or emergency service officials concerning actions taken to respond to such matters or a  
358 related threat to public safety; discussion of information excluded from this chapter pursuant to  
359 subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of  
360 any person or the security of any facility, building, structure, information technology system, or software  
361 program; or discussion of reports or plans related to the security of any governmental facility, building  
362 or structure, or the safety of persons using such facility, building or structure.

363 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-  
364 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or  
365 board of trustees of a trust established by one or more local public bodies to invest funds for  
366 postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of  
367 Chapter 15 of Title 15.2, or of the Rector and Visitors of the University of Virginia, acting pursuant to §  
368 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706,  
369 regarding the acquisition, holding or disposition of a security or other ownership interest in an entity,  
370 where such security or ownership interest is not traded on a governmentally regulated securities

371 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector  
372 and Visitors of the University of Virginia, prepared by the retirement system, or by the local finance  
373 board or board of trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of  
374 Title 15.2, or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
375 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
376 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
377 the investment to be acquired, held or disposed of by the retirement system, or by the local finance board  
378 or board of trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,  
379 the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in  
380 this subdivision shall be construed to prevent the disclosure of information relating to the identity of any  
381 investment held, the amount invested or the present value of such investment.

382 21. Those portions of meetings in which individual child death cases are discussed by the State  
383 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
384 individual child death cases are discussed by a regional or local child fatality review team established  
385 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
386 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
387 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
388 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
389 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

390 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
391 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
392 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
393 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
394 proprietary, business-related information pertaining to the operations of the University of Virginia  
395 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
396 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
397 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case

398 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
399 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
400 Medical School, as the case may be.

401 23. ~~In the case of the Virginia Commonwealth University Health System Authority, discussion~~  
402 Discussion or consideration by the Virginia Commonwealth University Health System Authority or the  
403 Virginia Commonwealth University Board of Visitors of any of the following: the acquisition or  
404 disposition by the Authority of real ~~or personal~~ property, equipment, or technology software or hardware  
405 and related goods or services, where disclosure would adversely affect the bargaining position or  
406 negotiating strategy of the Authority; ~~operational plans that could affect the value of such property, real~~  
407 ~~or personal, owned or desirable for ownership by the Authority;~~ matters relating to gifts, or bequests to,  
408 and fund-raising activities of, the Authority; grants and contracts for services or work to be performed  
409 by the Authority; marketing or operational strategies plans of the Authority where disclosure of such  
410 strategies or plans would adversely affect the competitive position of the Authority; and members of ~~its~~  
411 the Authority's medical and teaching staffs and qualifications for appointments thereto; ~~and~~  
412 ~~qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing~~  
413 ~~discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.~~

414 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee  
415 within the Department of Health Professions to the extent such discussions identify any practitioner who  
416 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

417 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
418 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
419 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
420 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title  
421 23.1 is discussed.

422 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
423 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-

424 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
425 wireless E-911 service.

426 27. Those portions of disciplinary proceedings by any regulatory board within the Department of  
427 Professional and Occupational Regulation, Department of Health Professions, or the Board of  
428 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach  
429 a decision or meetings of health regulatory boards or conference committees of such boards to consider  
430 settlement proposals in pending disciplinary actions or modifications to previously issued board orders  
431 as requested by either of the parties.

432 28. Discussion or consideration of information excluded from this chapter pursuant to  
433 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as  
434 those terms are defined in § 33.2-1800, or any independent review panel appointed to review  
435 information and advise the responsible public entity concerning such records.

436 29. Discussion of the award of a public contract involving the expenditure of public funds,  
437 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
438 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
439 the public body.

440 30. Discussion or consideration of grant or loan application information excluded from this  
441 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or  
442 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology  
443 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment  
444 Authority.

445 31. Discussion or consideration by the Commitment Review Committee of information excluded  
446 from this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to  
447 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

448 32. ~~Expired.~~

449 ~~33.~~ Discussion or consideration of confidential proprietary information and trade secrets  
450 developed and held by a local public body providing certain telecommunication services or cable

451 [television services](#) excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the  
452 exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU  
453 Authority Act (§ 15.2-7200 et seq.).

454 ~~34-33.~~ Discussion or consideration by a local authority created in accordance with the Virginia  
455 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and  
456 trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

457 ~~35-34.~~ Discussion or consideration by the State Board of Elections or local electoral boards of  
458 voting security matters made confidential pursuant to § 24.2-625.1.

459 ~~36-35.~~ Discussion or consideration by the Forensic Science Board or the Scientific Advisory  
460 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of ~~records~~  
461 [criminal investigative files](#) excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

462 ~~37-36.~~ Discussion or consideration by the Brown v. Board of Education Scholarship ~~Program~~  
463 [Awards](#) Committee of information or confidential matters excluded from this chapter pursuant to  
464 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual  
465 maximum scholarship award, review and consider scholarship applications and requests for scholarship  
466 award renewal, and cancel, rescind, or recover scholarship awards.

467 ~~38-37.~~ Discussion or consideration by the Virginia Port Authority of information excluded from  
468 this chapter pursuant to subdivision 1 of § 2.2-3705.6 [related to certain proprietary information gathered](#)  
469 [by or for the Virginia Port Authority.](#)

470 ~~39-38.~~ Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
471 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-  
472 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
473 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's  
474 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this  
475 chapter pursuant to subdivision 25 of § 2.2-3705.7.

476 ~~40-39.~~ Discussion or consideration of information excluded from this chapter pursuant to  
477 subdivision 3 of § 2.2-3705.6 [related to economic development.](#)

478 ~~41-40.~~ Discussion or consideration by the Board of Education of information relating to the  
479 denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision  
480 12 of § 2.2-3705.3.

481 ~~42-41.~~ Those portions of meetings of the Virginia Military Advisory Council or any commission  
482 created by executive order for the purpose of studying and making recommendations regarding  
483 preventing closure or realignment of federal military and national security installations and facilities  
484 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs  
485 organization appointed by a local governing body, during which there is discussion of information  
486 excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.

487 ~~43-42.~~ Discussion or consideration by the Board of Trustees of the Veterans Services  
488 Foundation of information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7 [related](#)  
489 [to personally identifiable information of donors.](#)

490 ~~44-43.~~ Discussion or consideration by the Virginia Tobacco Region Revitalization Commission  
491 of information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6 [related to certain](#)  
492 [information contained in grant applications.](#)

493 ~~45-44.~~ Discussion or consideration by the board of directors of the Commercial Space Flight  
494 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6 [related](#)  
495 [to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the](#)  
496 [Authority and certain proprietary information of a private entity provided to the Authority.](#)

497 ~~46-45.~~ Discussion or consideration of personal and proprietary information ~~that are~~ [related to the](#)  
498 [resource management plan program and](#) excluded from the provisions of this chapter pursuant to (i)  
499 subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the  
500 discussion or consideration of records that contain information that has been certified for release by the  
501 person who is the subject of the information or transformed into a statistical or aggregate form that does  
502 not allow identification of the person who supplied, or is the subject of, the information.

503 ~~47-46.~~ (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the  
504 Virginia Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to

505 subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7 [related to investigations of applicants for](#)  
506 [licenses and permits and of licensees and permittees.](#)

507 ~~48.~~ 47. Discussion or consideration of grant or loan application records excluded from this  
508 chapter pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an  
509 award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of  
510 Chapter 31 of Title 23.1.

511 ~~49.~~ 48. Discussion or development of grant proposals by a regional council established pursuant  
512 to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth  
513 and Opportunity Board.

514 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a  
515 closed meeting shall become effective unless the public body, following the meeting, reconvenes in  
516 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,  
517 regulation, or motion that shall have its substance reasonably identified in the open meeting.

518 C. Public officers improperly selected due to the failure of the public body to comply with the  
519 other provisions of this section shall be de facto officers and, as such, their official actions are valid until  
520 they obtain notice of the legal defect in their election.

521 D. Nothing in this section shall be construed to prevent the holding of conferences between two  
522 or more public bodies, or their representatives, but these conferences shall be subject to the same  
523 procedures for holding closed meetings as are applicable to any other public body.

524 E. This section shall not be construed to (i) require the disclosure of any contract between the  
525 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
526 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
527 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
528 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
529 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public  
530 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
531 bonds.

532 § 2.2-3712. Closed meetings procedures; certification of proceedings. [LD 16101652;  
533 recommended by Meetings Subcommittee on 11/4/15; Approved by FOIA Council 6/23/16.]

534 A. No closed meeting shall be held unless the public body proposing to convene such meeting  
535 has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the  
536 subject matter, (ii) states the purpose of the meeting as authorized in subsection A of § 2.2-3711 or other  
537 provision of law and (iii) ~~makes specific reference to~~ cites the applicable exemption from open meeting  
538 requirements provided in ~~§ 2.2-3707 or~~ subsection A of § 2.2-3711 or other provision of law. The  
539 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A  
540 general reference to the provisions of this chapter, the authorized exemptions from open meeting  
541 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the  
542 requirements for holding a closed meeting.

543 B. The notice provisions of this chapter shall not apply to closed meetings of any public body  
544 held solely for the purpose of interviewing candidates for the position of chief administrative officer.  
545 Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall  
546 announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed  
547 location within 15 days thereafter.

548 C. The public body holding a closed meeting shall restrict its discussion during the closed  
549 meeting only to those matters specifically exempted from the provisions of this chapter and identified in  
550 the motion required by subsection A.

551 D. At the conclusion of any closed meeting, the public body holding such meeting shall  
552 immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be  
553 included in the minutes of that body, certifying that to the best of each member's knowledge (i) only  
554 public business matters lawfully exempted from open meeting requirements under this chapter and (ii)  
555 only such public business matters as were identified in the motion by which the closed meeting was  
556 convened were heard, discussed or considered in the meeting by the public body. Any member of the  
557 public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall

558 so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place.  
559 The statement shall be recorded in the minutes of the public body.

560 E. Failure of the certification required by subsection D to receive the affirmative vote of a  
561 majority of the members of the public body present during a meeting shall not affect the validity or  
562 confidentiality of such meeting with respect to matters considered therein in compliance with the  
563 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall  
564 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of  
565 this chapter.

566 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed  
567 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a  
568 subject of the meeting.

569 G. A member of a public body shall be permitted to attend a closed meeting held by any  
570 committee or subcommittee of that public body, or a closed meeting of any entity, however designated,  
571 created to perform the delegated functions of or to advise that public body. Such member shall in all  
572 cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition  
573 to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity  
574 of the member of the parent public body who attended the closed meeting.

575 H. Except as specifically authorized by law, in no event may any public body take action on  
576 matters discussed in any closed meeting, except at an open meeting for which notice was given as  
577 required by § 2.2-3707.

578 I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such  
579 minutes shall not be subject to mandatory public disclosure.

580 **§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.**

581 A. Notwithstanding any other provision of law, agricultural landowners or operators who fully  
582 implement and maintain the applicable components of their resource management plan, in accordance  
583 with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be  
584 deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load

585 (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria,  
586 nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL  
587 Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and  
588 sediment.

589 B. The presumption of full compliance provided in subsection A shall not prevent or preclude  
590 enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan  
591 otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System  
592 permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay  
593 Preservation Act (§ 62.1-44.15:67 et seq.).

594 C. Landowners or operators who implement and maintain a resource management plan in  
595 accordance with this article shall be eligible for matching grants for agricultural best management  
596 practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program  
597 administered by the Department in accordance with program eligibility rules and requirements. Such  
598 landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and  
599 58.1-439.5.

600 D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority  
601 granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et  
602 seq.) of Title 3.2.

603 E. Any personal or proprietary information collected pursuant to this article shall be exempt from  
604 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release  
605 information that has been transformed into a statistical or aggregate form that does not allow  
606 identification of the persons who supplied, or are the subject of, particular information. This subsection  
607 shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all  
608 other instances of federal or state regulatory actions. Pursuant to subdivision ~~46~~ 45 of § 2.2-3711, public  
609 bodies may hold closed meetings for discussion or consideration of certain records excluded from the  
610 provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

611 **§ 23.1-1303. Governing boards; duties.**

612 A. For purposes of this section, "intellectual property" means (i) a potentially patentable  
613 machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an  
614 issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

615 B. The governing board of each public institution of higher education shall:

616 1. Adopt and post conspicuously on its website bylaws for its own governance, including  
617 provisions that (i) establish the requirement of transparency, to the extent required by law, in all board  
618 actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700  
619 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board  
620 record minutes of each open meeting and post the minutes on the board's website, in accordance with  
621 subsection ~~I~~H of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically  
622 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in  
623 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in  
624 an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711;  
625 and (iii) require that the board invite the Attorney General's appointee or representative to all meetings  
626 of the board, executive committee, and board committees;

627 2. Establish regulations or institution policies for the acceptance and assistance of students that  
628 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the  
629 federal requirement to register for the selective service are not eligible to receive any state direct student  
630 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth  
631 shall not be considered in making admissions determinations for students who have earned a diploma  
632 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of  
633 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

634 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

635 4. Notwithstanding any other provision of state law, establish policies and procedures requiring  
636 the notification of the parent of a dependent student when such student receives mental health treatment  
637 at the institution's student health or counseling center and such treatment becomes part of the student's  
638 educational record in accordance with the federal Health Insurance Portability and Accountability Act

639 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal  
640 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part  
641 99). Such notification shall only be required if it is determined that there exists a substantial likelihood  
642 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to  
643 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious  
644 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.  
645 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,  
646 or behavioral disorders by a health regulatory board within the Department of Health Professions who is  
647 treating the student has made a part of the student's record a written statement that, in the exercise of his  
648 professional judgment, the notification would be reasonably likely to cause substantial harm to the  
649 student or another person. No public institution of higher education or employee of a public institution  
650 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm  
651 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct  
652 by the institution or its employees;

653 5. Establish policies and procedures requiring the release of the educational record of a  
654 dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. §  
655 1232g), to a parent at his request;

656 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to  
657 compete in the twenty-first century and that all students matriculating in teacher-training programs  
658 receive instruction in the effective use of educational technology;

659 7. Establish policies for the discipline of students who participate in varsity intercollegiate  
660 athletics, including a provision requiring an annual report by the administration of the institution to the  
661 governing board regarding enforcement actions taken pursuant to such policies;

662 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-  
663 2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed  
664 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive  
665 officer's performance. Any change to the chief executive officer's employment contract during any such

666 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's  
667 members;

668 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt  
669 regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions  
670 of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require  
671 the human research committee to submit to the Governor, the General Assembly, and the chief executive  
672 officer of the institution or his designee at least annually a report on the human research projects  
673 reviewed and approved by the committee and require the committee to report any significant deviations  
674 from approved proposals;

675 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and  
676 the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of  
677 such statements pursuant to § 30-133;

678 11. Submit to the General Assembly and the Governor an annual executive summary of its  
679 interim activity and work no later than the first day of each regular session of the General Assembly.  
680 The executive summary shall be submitted as provided in the procedures of the Division of Legislative  
681 Automated Systems for the processing of legislative documents and reports and shall be posted on the  
682 General Assembly's website;

683 12. Make available to any interested party upon request a copy of the portion of the most recent  
684 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in  
685 Virginia" pertaining to institutions of higher education;

686 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and  
687 use of intellectual property and provide a copy of such policies to the Governor and the Joint  
688 Commission on Technology and Science. All employees, including student employees, of public  
689 institutions of higher education are bound by the intellectual property policies of the institution  
690 employing them; and

691 14. Adopt policies that are supportive of the intellectual property rights of matriculated students  
692 who are not employed by such institution.

**693 § 54.1-2400.2. Confidentiality of information obtained during an investigation or**  
**694 disciplinary proceeding; penalty.**

**695** A. Any reports, information or records received and maintained by the Department of Health  
**696** Professions or any health regulatory board in connection with possible disciplinary proceedings,  
**697** including any material received or developed by a board during an investigation or proceeding, shall be  
**698** strictly confidential. The Department of Health Professions or a board may only disclose such  
**699** confidential information:

**700** 1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or  
**701** order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

**702** 2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or  
**703** registrations to practice a health profession, including the coordinated licensure information system, as  
**704** defined in § 54.1-3030;

**705** 3. To hospital committees concerned with granting, limiting or denying hospital privileges if a  
**706** final determination regarding a violation has been made;

**707** 4. Pursuant to an order of a court of competent jurisdiction for good cause arising from  
**708** extraordinary circumstances being shown;

**709** 5. To qualified personnel for bona fide research or educational purposes, if personally  
**710** identifiable information relating to any person is first deleted. Such release shall be made pursuant to a  
**711** written agreement to ensure compliance with this section; or

**712** 6. To the Health Practitioners' Monitoring Program within the Department of Health Professions  
**713** in connection with health practitioners who apply to or participate in the Program.

**714** B. In no event shall confidential information received, maintained or developed by the  
**715** Department of Health Professions or any board, or disclosed by the Department of Health Professions or  
**716** a board to others, pursuant to this section, be available for discovery or court subpoena or introduced  
**717** into evidence in any civil action. This section shall not, however, be construed to inhibit an investigation  
**718** or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

719 C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any  
720 investigation or proceeding by any health regulatory board acting within the scope of its authority. The  
721 disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such  
722 privilege in any other proceeding.

723 D. This section shall not prohibit the Director of the Department of Health Professions, after  
724 consultation with the relevant health regulatory board president or his designee, from disclosing to the  
725 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which  
726 indicates a possible violation of any provision of criminal law, including the laws relating to the  
727 manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified  
728 as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

729 E. This section shall not prohibit the Director of the Department of Health Professions from  
730 disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of  
731 aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information  
732 required to be made available to the public pursuant to § 54.1-2910.1.

733 F. This section shall not prohibit the Director of the Department of Health Professions, following  
734 consultation with the relevant health regulatory board president or his designee, from disclosing  
735 information about a suspected violation of state or federal law or regulation to other agencies within the  
736 Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction  
737 over the suspected violation or requesting an inspection or investigation of a licensee by such state or  
738 federal agency when the Director has reason to believe that a possible violation of federal or state law  
739 has occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or  
740 federal agency having jurisdiction over the suspected violation of state or federal law to conduct an  
741 inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to  
742 requests for inspections or investigations of licensees. Nothing in this subsection shall require the  
743 Director to make any disclosure. Nothing in this section shall permit any agency to which the Director  
744 makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials  
745 received from the Department.

746 G. Whenever a complaint or report has been filed about a person licensed, certified, or registered  
747 by a health regulatory board, the source and the subject of a complaint or report shall be provided  
748 information about the investigative and disciplinary procedures at the Department of Health Professions.  
749 Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the  
750 licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee  
751 shall be provided with a copy of the complaint or report and any records or supporting documentation,  
752 unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant  
753 board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory  
754 letter to the person who was the subject of the complaint or report. The relevant board may also inform  
755 the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter was  
756 concluded without a disciplinary proceeding, (iii) of the process the board followed in making its  
757 determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to  
758 the person who was the subject of the complaint or report. In providing such information, the board shall  
759 inform the source of the complaint or report that he is subject to the requirements of this section relating  
760 to confidentiality and discovery.

761 H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than  
762 confidential exhibits described in subsection K, shall be disclosed. Information on the date and location  
763 of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations  
764 the respondent is alleged to have violated shall be provided to the source of the complaint or report by  
765 the relevant board prior to the proceeding. The source shall be notified of the disposition of a  
766 disciplinary case.

767 I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from  
768 interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or  
769 report, or reviewing with fact witnesses any portion of records or other supporting documentation  
770 necessary to refresh the fact witnesses' recollection.

771 J. Any person found guilty of the unlawful disclosure of confidential information possessed by a  
772 health regulatory board shall be guilty of a Class 1 misdemeanor.

773 K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable  
774 skill and safety to patients and the public because of a mental or physical disability, a health regulatory  
775 board shall consider whether to disclose and may decide not to disclose in its notice or order the  
776 practitioner's health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-  
777 127.1:03. Such information may be considered by the relevant board in a closed hearing in accordance  
778 with subsection A-~~15~~16 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The  
779 public notice or order shall identify, if known, the practitioner's mental or physical disability that is the  
780 basis for its determination. In the event that the relevant board, in its discretion, determines that this  
781 subsection should apply, information contained in the confidential exhibit shall remain part of the  
782 confidential record before the relevant board and is subject to court review under the Administrative  
783 Process Act (§ 2.2-4000 et seq.) and to release in accordance with this section.

784 **22. That the provisions of subdivisions A 7, 8, 9, 12, 32, 35, 37, 39, 42, 43, 44, 45, and 46 of § 2.2-**  
785 **3711 of the Code of Virginia, as amended by this act, are declaratory of existing law.**

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